

**IN THE UNITED STATES COURT OF FEDERAL CLAIMS**

NEIL ZACCARI

Plaintiff,

v.

THE UNITED STATES OF AMERICA,

Defendant.

1:18-cv-945

Judge Patricia E. Campbell-Smith

**STATUS REPORT REGARDING A STAY  
AND PROPOSED SCHEDULE**

On April 2, 2019, the Court ordered the parties to provide a status report, indicating the parties positions regarding a “stay of in this matter pending the outcome of related litigation in the district courts, and an agreed upon schedule for proposed further proceedings” in the event that a stay is not granted. *Opinion*, ECF No. 20 (Apr. 2, 2019). The parties have conferred and offer the following report.

**I. Status of Other Cases**

The litigation in the U.S. District Court for the District of Columbia—*Zaccari v. Apprio, Inc.*, Case No. 1:18-cv-1560 (D. D.C.), and *Apprio, Inc. v. Zaccari*, Case No. 1:18-cv-2180 (D. D.C.)—have been consolidated. Apprio filed a motion to dismiss in Case No. 1:18-cv-1560, challenging *inter alia* Mr. Zaccari’s averments of ownership of the CCR software at issue in these cases. That motion is currently pending. The district court has not indicated when a ruling should be expected.

In Case No. 1:18-cv-2180, Apprio claims that it owns the CCR software by assignment through Mr. Zaccari’s employment agreement. Consequently, the issue of ownership of the CCR software is fully joined in the district court.

The United States (the Government) filed a statement of interest pursuant to 28 U.S.C. § 517 in Case No. 1:18-cv-1560. In that statement, the Government invoked its “authorization and consent” pursuant to 28 U.S.C. 1498(b). The statement was filed on March 11, 2019.

Mr. Zaccari’s suit in the Eastern District of Virginia—*Zaccari v. Discovery Techs. LLC*, Case No. 3:18-cv-00453 (E.D. Va.). The district court dismissed Mr. Zaccari’s copyright infringement and statutory conspiracy claims while keeping before it Mr. Zaccari’s misappropriation of a trade secret claim. That case is now stayed pending a determination in the *Apprio* case of the ownership of the CCR software.

## **II. The Parties Views on a Stay**

The United States submits that a stay is both appropriate and advisable. As noted above, the parties to the District of Columbia litigation are presently litigating the issue of ownership of the CCR software, the same software that is at issue before this Court. As the seminal issue in any copyright claim, the ownership of the work at issue rightfully must be determined first. All other elements of the copyright claim are of little importance if the plaintiff is not the owner of the rights it seeks to assert. And neither the parties nor the Court should expend resources that may ultimately prove wasteful should the ownership be decided in favor of the employer, Apprio. Further, the district court—having both the employer and former employee before it—is in a better position to address the employment agreement that underlies ownership issues. Accordingly, the Government submits that this case should be stayed until a final resolution of all copyright issues in the District of Columbia litigation.

Plaintiff submits his agreement with the Government that this case should be stayed until a final resolution of all copyright ownership issues in the District of Columbia litigation.

### **III. Proposed Schedule**

In the event that a stay is not granted, the following schedule is proposed:

Government's Answer	June 3, 2019
Early Meeting of Counsel	At the parties' convenience, but not later than June 28, 2019
Joint Preliminary Status Report & Initial Disclosures	July 12, 2019
Scheduling Conference to Set Pretrial and Trial Schedule	At the Court's convenience
Fact Discovery Opens	July 29, 2019
Fact Discovery Closes	January 31, 2020
Plaintiff's Expert Reports	March 6, 2020
Defendant's Expert Reports	April 3, 2020
Plaintiff's Reply Reports	April 24, 2020
Expert Discovery Opens	May 8, 2020
Expert Discovery Closes	May 22, 2020
Evidentiary Trial (estimate 7 days)	At the Court's convenience after June 1, 2020

Respectfully submitted:

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